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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Amendment of Section 73.622(b))
Table of Allotments)
Digital Television Broadcast Stations)
(Lexington, Kentucky))

MM Docket No. 01-83
RM-10085

To: The Chief, Video Services Division
Mass Media Bureau

**RESPONSE OF WDKY LICENSEE, LLC TO REPLY COMMENTS
OF WLEX COMMUNICATIONS, LLC**

WDKY Licensee, LLC, the licensee of Station WDKY-TV, Danville, Kentucky ("WDKY"), by its attorneys, hereby submits its response to the Reply Comments of WLEX Communications, Inc., the licensee of WLEX-TV, Lexington, Kentucky, filed June 15, 2001 in the above-referenced proceeding.¹

In its Comments in this proceeding, WDKY supported the WLEX proposal to substitute Channel 39 for WLEX-DT's assigned DTV Channel 22. WDKY also advanced a Counterproposal which requests the Commission to substitute Channel 22 for Channel 4 which is the assigned DTV channel for WDKY-DT, Danville, Kentucky. The WLEX Reply Comments contend that "WDKY's proposal is not mutually exclusive with WLEX-DT's proposed channel

¹ WDKY respectfully requests leave to file this response in order to address arguments concerning WDKY's Counterproposal which have been advanced by WLEX in its Reply Comments.

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substitution ... and thus does not qualify as a counterproposal.” (Reply Comments at p. 2).²

While WLEX admits that “WDKY’s proposal appears to offer the opportunity for more efficient use of the broadcast spectrum” (Reply Comments at p. 2), it nevertheless argues that the Commission should not consider WDKY’s proposal in this proceeding.

The Commission’s Notice of Proposed Rule Making in this proceeding, DA 01-860, released April 9, 2001 (“NPRM”) clearly provided for the filing of counterproposals as long as they were timely advanced by the Comment deadline of May 31, 2001. *See Appendix to NPRM* at para. 3(a)-(c). *See also, In the Matter of Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, FCC 01-24, released January 19, 2001, para. 54 (providing that petitions for rule making for modified DTV allotments where a Notice of Proposed Rulemaking has been adopted are cut-off as of the comment deadline).

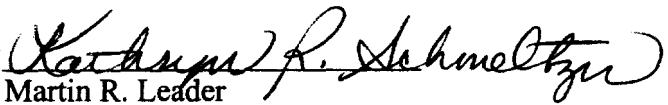
The WDKY Counterproposal is mutually exclusive with the WLEX-DT allotment of Channel 22 and with the pending application of WAOM-DT, Channel 21, Morehead, Kentucky (FCC File No. BPCDT-19991020ACE). On February 16, 2001, the Chief of the Television Branch rescinded the grant of the WAOM-DT application and returned that application to pending status because it was mutually exclusive with WLEX-DT. As WLEX acknowledges, the grant of WLEX-DT’s channel substitution is designed to address the conflict between WAOM-DT’s application for digital facilities and WLEX-DT’s application for digital facilities on its assigned DTV Channel 22. If the WLEX Petition for Rulemaking is granted and as a result the FCC grants the WAOM-DT application, WDKY will be precluded from operating on Channel 22. The timely advanced Counterproposal of WDKY to substitute Channel 22 at Danville, Kentucky must be considered in this proceeding. Contrary to the speculation of

² The only case that WLEX cites in support of its argument, *In the Matter of Amendment of Section 73.606(b), Table of Allotments (Buffalo, New York)*, 14 FCC Rcd 11856 (1999), is totally inapposite. It involved a request that the Commission reserve all unreserved channels being used for noncommercial operation which was simply not a counterproposal.

WLEX, there is no reason that consideration of the WDKY Counterproposal should delay this proceeding. It will be far more efficient and will promote the speedier initiation of DTV service if the Commission considers the Counterproposal in the context of this proceeding, particularly since Danville is part of the Lexington, Kentucky DMA.

Respectfully submitted,

WDKY LICENSEE, LLC

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CERTIFICATE OF SERVICE

I, Lisa Sorum, a secretary with the law firm Shaw Pittman, hereby certify that a true and correct copy of the foregoing "Response Of WDKY Licensee, LLC To Reply Comments Of WLEX Communications, LLC" was sent by first-class mail, postage prepaid, this 27th day of June 2001, to the following:

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A handwritten signature in black ink, reading "Lisa M. Sorum", written over a horizontal line.